
(2026) 02 KL CK 1678

In the High Court Of Kerala

Case No : Writ Petition (C) No. 4911 Of 2023

Ganga Constructions, Represented By Its Managing Partner
Smt.Meena Mamu

APPELLANT

Vs

Assistant Executive Engineer, Local Self Government
Department, Municipal Office, Irinjalakuda, Pin - 680 121

RESPONDENT

Date of Decision : 12-02-2026

Acts Referred:

Central Goods and Service Tax Act, 2017 — Section 12, 13, 15, 15(2)

Citation : (2026) 02 KL CK 1678

Hon'ble Judges : Harisankar V. Menon, J

Bench : Single Bench

Advocate : M.R.Dhanil, Senitta P. Jojo, S.Ambily, K.K.Chandran Pillai, V.Renju

Final Decision : Allowed

Judgement

Harisankar V. Menon, J

1. The petitioner is stated to be a contractor and pursuant to a notice inviting tender dated 23.02.2019, floated by the respondent – Municipality, placed the tender, and the petitioner was also awarded the work as evidenced by Ext.P1 work order dated 18.06.2019. An agreement was also entered into between the petitioner and the respondent – Municipality, as evidenced by Ext.P2, as per which the total estimate for the work is a sum of Rs.2,53,82,519.35. The petitioner contends that the amount quoted above and forming part of the agreement is exclusive of GST with reference to the provisions of the CGST/SGST Act, 2017. Therefore, with reference to various circulars issued by the Government, the petitioner state that while making periodical payments to the petitioner, GST was also paid to it. Later, pursuant to an audit report at Ext.P15, wherein it was recorded that the GST is included in the quote placed by the petitioner, the payment of GST effected to the petitioner till that date was found to be inappropriate. On that basis, steps for recouping GST already paid were also taken. The petitioner, in such circumstances, sought for certain clarifications

under the provisions of the Right to Information Act, 2005, in response to which, Ext.P17 communication dated 25.11.2022 has also been issued by the respondent – Municipality, seeking to clarify the position with reference to the liability of the Municipality to satisfy GST while making payments to the petitioner as above. It is in such circumstances that the petitioner is before this Court seeking to challenge the audit report at Ext.P15 as well as the communication at Ext.P13, issued by the Assistant Engineer attached to the Municipality, concluding that the payments towards GST already effected to the petitioner requires to be recouped.

2. I have heard Sri.M.R. Dhanil, the learned counsel for the petitioner, as well as Smt. V. Renju, the learned Standing Counsel for the respondent – Municipality.

3. The short issue arising for consideration in this writ petition is as to whether the respondent – Municipality, is required to satisfy the GST component while making periodical payments to the petitioner as against the bills raised by it. The petitioner seeks to rely on Ext.P4 circular dated 14.12.2017, issued by the Finance (Industries & Public Works) Department, which clarified that while obtaining administrative sanction, the total amount submitted for approval should separately indicate the estimated cost and the applicable GST. However, the aforementioned requirement is with reference to the mandate for the Municipality while obtaining the administrative sanction. Clause 2 of Ext.P4 states that in the tender documents, the rate quoted should be “exclusive of GST” but “inclusive of all other taxes”, etc. At the same time, it further states that the contractor is required to indicate separately the applicable GST in the tender document. According to Smt. V. Renju, the petitioner having not separately shown the GST in the tender document, the benefit cannot be extended to it. Even on the face of the afore, this Court notices that the tender documents, as noted earlier, should only show the rates quoted by the contractor without including the “GST”. Therefore, in my opinion, the tender placed by the petitioner has to be understood as one filed without disclosing the GST component.

4. In the light of the afore, clauses 3, 4, and 5 of the Ext.P4 circular requires to be noticed as under:-

“3) For the purpose of determining L1, the rates quoted by contractors exclusive of GST should be taken into consideration.

4) When the bills for any Goods, Services or Works procured by any Government department or agency are processed the payment has to be made to the contractor for total value of work PLUS the applicable GST.

5) In case of change in the rate of GST between the dates of invoice, supply or payment, the applicable rate of GST will be reckoned as per Sections 12 and 13 of the GST Act.”

(underlining supplied)

A reading of clauses 3, 4, and 5 referred to above would show that the rates

quoted by the contractors are exclusive of GST, and whenever the bills presented by the contractor are being processed, the payment requires to be made for the total value of the work "PLUS the applicable GST". It is also to be noticed that with reference to the changes in tax structure/rate, clause 5 of Ext.P4 circular has provided that whenever there is a change in rate, that also require to be reckoned while considering the bills being submitted by the contractor. Further, more importantly, clause 3 stipulates payment of GST for the "goods, services" procured by the Municipality. "Goods" and "Services" became taxable under GST only after 2017 and that is why such a stipulation came to be included, since till that date the norms could never include the GST component.

5. Similarly, the circular at Ext.P5 dated 27.11.2017 also requires to be noticed. It is the circular issued by the Chief Engineer attached to the Local Self Government Department, Thiruvananthapuram. A reading of the afore circular would also show that the tender requires to be placed without the GST component that while payments are being effected on the basis of the bills submitted, GST requires to be added and considered while honouring the commitments to the contractors, etc. Furthermore, the circular at Ext.P5 provides that, on the contractor producing evidence to show that the tax is paid, it also require to be reimbursed. The circular at Ext.P4 dated 14.12.2017 seems to have been modified through Ext.P6 circular dated 01.03.2019 by the Finance (Industries & Public Works) Department. The circumstances under which the circular has been so issued have been specifically noticed in the first paragraph therein. Later, the circular proceeds to provide that the estimates are being prepared based on the rates "devoid of GST", that the GST is required to be added to the "base value" etc. Detailed procedures/guidelines are also laid down by this circular, and the relevant clauses thereunder read as under: -

"1. In case of Public Works, for which estimates are prepared based on DSR (Delhi Schedule of Rates), the latest Cost of Indices published by PWD from time to time excluding the VAT / GST component is to be used for arriving estimate rates and it should be without GST Component(s) on the input/input services.

2. In the case of Non-DSR items also, the rate(s) taken for the input/input services should be exclusive of VAT/ GST Component.

3. The Public Works Department shall derive the applicable Cost indices for various locations excluding the VAT/GST Component and upload in the PRICE software, in time.

4. All bidders for public works, goods and services should have valid GST Registration.

5. The rates quoted by the bidders shall include all taxes and duties Construction Workers Welfare Fund Contribution etc, except the GST.

6. While finalizing the procurement of Goods, Services or both or Public Works, the total amount of the estimates should be arrived exclusive of Goods and

Service Tax (GST).

7. For the purpose of determining the lowest bidder (L1), the rates quoted by the bidders exclusive of GST amount should be taken into consideration.

8. For the purpose of issuing Administrative Sanction, the total amount for approval should indicate the estimate amount and GST applicable amounts separately.

9. When the bills of any goods, services or both or Public Works procured are processed, the payment has to be made to the contractor for the total value of the works at contract rates PLUS the applicable GST rate.

10. In case of change in the GST rate between the date of invoice and date of supply OR last date of submission of tender (in case of works), and the date of release of payment for works done, the prevailing GST Rate will be reckoned as per the GST laws of the Central and State Governments for payment.

11. Any variations in the tax rate of GST (increase or decrease) shall be adjusted at the time of bill processing i.e., deduction in the case of decrease in GST Rate or addition in case of increase in GST Rate shall be made at the time of settlement of bills.

12. The TDS and other deductions would be on payments made or credited to the supplier excluding GST.

13. The amount deducted as tax under the provisions of GST Act shall be paid into the Government by the deductor within TEN days after the end of month in which such deduction is made in the prescribed manner.

14. The deductor shall furnish to the deductee a certificate mentioning therein Contract value, rate of deduction, amount deducted, amount paid into Government in the prescribed manner."

(underlining supplied)

6. A reading of the afore would also show that, as stated in the previous circulars, the rates to be quoted by the bidder need to be inclusive of all taxes, however, "except the GST" (clause 5). Similarly, clause 6 provides that the finalisation of the procurement of goods or services for public works should be exclusive of GST. Again, clause 7 also states that while identifying the L1 (lowest bidder), the rates as quoted by the bidder, exclusive of GST, need to be taken into account. Again clause 9 has used the word "PLUS" in capital letters, emphasising that tax requires to be separately paid to the contractor, from which the position is made clear. Similarly, clause 10 also considers the change as regards the GST rate, as has been noticed in Ext.P4 circular at clause 5. Thus, the circulars issued by the Government from time to time show that the contract is being finalised without taking into account the component of GST, and it is only upon the successful completion of work or with reference to the periodical presentation of bills that GST requires to be considered while making payments

to the contractors concerned.

7. In the case at hand, it has already been noticed that the tender has been placed by the petitioner without showing the GST component. However, in view of the circulars issued, it requires the inclusion of the GST also while processing the bills presented by the petitioner.

8. Smt. V. Renju, however, would seek to sustain the action taken by the respondent – Municipality with reference to the contents of Ext.P17 communication dated 25.11.2022. According to her, the circular at Ext.P6 has been specifically referred to in Ext.P17 communication, finding that the cost index, with reference to the works, was inclusive of GST component till the date of Ext.P6, and insofar as the technical sanction was obtained on 22.02.2019, the GST was already included in the work. However, in my opinion, this contention cannot be accepted since GST has been introduced only from 01.07.2017. Till such time, the liability, if any, as against the contractor would have been with reference to the liability to satisfy the tax under the Finance Act, 1994, as well as the tax under the provisions of the Kerala Value Added Tax Act, 2003. In other words, there was no occasion for the respondents to have considered the impact of GST with reference to the cost index as prepared during 2016, as stated in Ext.P17 communication.

9. In the case at hand, the work has been awarded on the basis of the notice inviting tender dated 23.02.2019, and an agreement is also seen executed as evidenced by Ext.P2 and the work order granted to the petitioner on 18.06.2019. By the time the afore activities have taken place, admittedly, the circulars referred to earlier have been issued by the Government specifically providing that the GST component need not be originally included in the tender document and that it is required to be considered only when the periodical bills are presented by the petitioner/contractor.

10. I may also notice the provisions of Section 15 of the CGST Act, 2017, which reads as under:

“Value of Taxable Supply.— (1) The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.

(2) The value of supply shall include–

(a) any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;”

(underlining supplied)

Under sub-section (2) of Section 15, the value of supply by a contractor/service

provider would not include the tax payable under the CGST/SGST Act. Thus, the stipulations in the various circulars noticed earlier are also in tune with Section 15 of the CGST Act. Hence, the petitioner is justified in contending that it is entitled to be paid the GST component for the works carried out by it.

11. In that view of the matter, I am of the opinion that the learned counsel Sri.M.R. Dhanil, representing the petitioner, is justified in contending that the GST component also requires to be satisfied as against the periodical bills submitted by the petitioner.

Therefore, the petitioner is entitled to succeed. This writ petition, therefore, would stand allowed, setting aside Ext.P13 communication of the respondent – Municipality issued on the basis of the audit report at Ext.P15.